

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

TERRY EZELL,

Plaintiff,

v.

SHAWNA MCCANN,

Defendant.

Case No. C23-729RSM

ORDER DENYING MOTION TO
EXTEND TIME FOR SERVICE

This matter comes before the Court on Plaintiff Terry Ezell's "Motion to Extend the Time for Service," Dkt. #20.

Mr. Ezell, proceeding *pro se*, filed his Complaint on May 15, 2023, against Defendant Shawna McCann. Dkt. #1. On September 1, 2023, the Court issued a Minute Order striking Plaintiff's two Motions for Summary Judgment and advising Plaintiff of the deadline to serve Defendant. Dkt. #14. The Court stated as follows:

The following MINUTE ORDER is made by direction of the Court, the Honorable Ricardo S. Martinez, United States District Judge: This case was originally opened on May 15, 2023. Dkt. #1. A notice of filing deficiency was mailed to Plaintiff Terry Ezell on May 17, 2023, informing him that the filing fee was not paid, the civil cover sheet was omitted, and that the proposed complaint lacked signatures from several Plaintiffs. Dkt. #4. Mr. Ezell later paid the filing fee and filed a civil cover sheet. The Court never received signatures from the other Plaintiffs, and they have been terminated as plaintiffs of record in this case.

On June 2, 2023, the Court mailed a blank summons to Mr. Ezell, to be served by him on Defendant Shawna McCann, along with a letter and instructions. Dkt. #5. The letter states "[y]ou are responsible

1 for serving the Summons and a copy of the Complaint on the
2 defendant in your case.” Dkt. #5-1. The instructions state, in part:

3 After you file your lawsuit, you must serve your papers on the other
4 side, which means making sure they receive copies. Until the other
5 side receives the papers in a way that the law says is valid, they are
6 not a party to the lawsuit, and the case has not really begun. You
7 must give the other parties to your lawsuit a copy of every paper that
8 you file with the Court. This is called “serving” the other parties.
9 Serving your papers is critical. If you do not serve your papers on
10 the other parties in exactly the way required by law, it is as if you
11 never filed those papers at all.... The rules for serving the original
12 complaint are different from the rules for serving other papers, and
must be followed exactly. If the complaint is not properly served on
the other parties, the case will not proceed. Rule 4 of the Federal
Rules of Civil Procedure lays out the requirements for serving the
original complaint.... If you do not serve your complaint and
summons within 120 days of the day you filed the complaint, the
Court may dismiss your case.

13 Dkt. #5-2 at 1. The Court advises Mr. Ezell to carefully re-read all
14 the instructions as well as Rule 4 before serving Defendant McCann.

15 The Court has received no indication that Defendant McCann was
16 properly served. She has not appeared in this action.

17 On August 21, 2023, Mr. Ezell filed a Motion for Summary
18 Judgment. Dkt. #11. On August 31, 2023, Mr. Ezell filed an
19 Amended Motion for Summary Judgment without withdrawing his
20 prior Motion. Dkt. #13. Both Motions are unsigned and fail to
21 indicate they were served on Defendant McCann, who has not
22 appeared in this case and is not receiving copies of materials added
23 to the docket. Federal Rule of Civil Procedure 11(a) requires
Motions to be signed by the Plaintiff or his attorney. Federal Rule
of Civil Procedure 5 requires Motions to be served on the opposing
party. The Court has no indication that Mr. Ezell has served these
Motions on Defendant McCann, or that she is aware that this case
exists.

24 Given all of the above, the Court STRIKES both Motions for
25 Summary Judgment, Dkts. #11 and #13, as procedurally improper
26 and premature. Such motions are properly filed after a defendant
27 has appeared and responded to the complaint. Plaintiff has until
28 September 12, 2023, to serve Defendant McCann with a copy of the
complaint and summons as instructed above. If Plaintiff does not

1 file timely proof of service with the Court this case will be
2 dismissed.

3 *Id.* On September 13, 2023, the Court issued an Order to Show Cause stating, “[t]he Court
4 believes Defendant McCann has not been properly served under Rule 4,” and, “[f]ailure to timely
5 serve is a valid basis for dismissal of this case without prejudice.” Dkt. #17. The Court gave Mr.
6 Ezell 14 days to respond. The Court received no response after three weeks. Mail addressed to
7 Mr. Ezell was returned as undeliverable. Dkts. #16 and #18. On October 3, 2023, the Court
8 dismissed Mr. Ezell’s claims under Rule 4(m) for failure to serve and closed the case. Dkt. #19.
9 The following day, the Court received the instant Motion, dated by Mr. Ezell “9/27/23” and
10 postmarked on October 2, 2023. Dkt. #20.

12 Mr. Ezell began this case with a return address of 310 25th Ave in Seattle. *See* Dkt. #1.
13 He later started mailing the Court from 1626 Grant Avenue S in Renton. *See* Dkt. #11. The
14 instant Motion has a return address of FCI Sheridan in Oregon. Mr. Ezell has never filed a notice
15 of change of address.

17 Mr. Ezell now seeks to extend the time to serve Defendant McCann, arguing that after he
18 filed his Complaint he “was under the assumption [sic] that the service of the summons and
19 complaint was completed,” and that “after not hearing anything from the courts or the defendant
20 he began reaching out to the court clerk trying to obtaine [sic] the docket sheet...” Dkt. #20 at 1.
21 Mr. Ezell thoroughly and accurately states the applicable law on this issue but makes no mention
22 of the above Minute Order or Order to Show Cause or why he has filed materials with the Court
23 from three different addresses.

25 Federal Rule of Civil Procedure 4(m) states in part:

26
27 If a defendant is not served within 90 days after the complaint is
28 filed, the court—on motion or on its own after notice to the
plaintiff—must dismiss the action without prejudice or order that

1 service be made within a specified time. But if the plaintiff shows
2 good cause for the failure, the court must extend the time for service
for an appropriate period.

3 Fed. R. Civ. P. 4(m).

4 This case was closed due to Plaintiff's failure to respond to the Court's Order and his
5 other procedural errors listed above. Even if the Court were to consider the instant Motion as a
6 timely response to the Court's Order to Show Cause, it fails to contain adequate good cause for
7 the requested extension. Mr. Ezell was clearly instructed that he needed to do more than file his
8 Complaint to serve Defendant. Given all of the circumstances, dismissing the claims without
9 prejudice was and is the proper outcome.
10

11 Accordingly, the Court hereby finds and ORDERS that Plaintiff's Motion to Extend the
12 Time for Service, Dkt. #20, is DENIED. This case remains CLOSED. The Court DIRECTS the
13 clerk to send copies of this Order to Plaintiff at his current address of record AND to the address
14 listed in his latest filing:
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16 Terry L. Ezell #35187-086
17 Federal Correctional Institution
18 P.O. Box 5000
19 Sheridan, OR 97378

20 DATED this 6th day of October, 2023.

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24 RICARDO S. MARTINEZ
25 UNITED STATES DISTRICT JUDGE
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